



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SK

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/061,568 04/16/98 WRIGHT

C JJI-43

┌

QM32/1205

EXAMINER

AUDLEY A CIAMPORCERO JR
ONE JOHNSON AND JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

JACKSON, S	
ART UNIT	PAPER NUMBER

3738

DATE MAILED:

12/05/00

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/061,568

Applicant(s)

Carol Wright et al.

Examiner

Suzette Jackson

Group Art Unit

3738



☒ Responsive to communication(s) filed on May 18, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-12 is/are pending in the application.

Of the above, claim(s) 1-3, 8, and 10 is/are withdrawn from consideration.

☒ Claim(s) 4-7, 9, and 11 is/are allowed.

☒ Claim(s) 12 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 18

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

☒ INDEX of claims copy

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3738

DETAILED ACTION

1. Applicant's CPA, Information Disclosure Statement, and Amendment dated May 18, 2000 have been received in application serial number 09/061,568. A copy of the files index is attached to show claim numbering based on previously allowed claims. Claim 4 has been renumbered claim 1, claim 5 renumbered 2; claim 6 renumbered claim 3; claim 7 renumbered claim 4; claim 9 renumbered claim 5; claim 11 renumbered claim 6. Claims 1-3, 8 and 10 are officially canceled.

Claim Rejections - 35 U.S.C. § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

3. Claim 12 is rejected under 35 U.S.C. 102(e) as being anticipated by Yan USPN 5,843,172 which discloses a prosthesis comprising: a stent (12) formed from a metal wire or strut (col.2, line 21) with pores loaded with therapeutic agents; the pores having a closed perimeter on all

Art Unit: 3738

sides and an open top (see Figure 3); Yan also discloses that various drugs or agents may be used to prevent restenosis without limitation, since other therapeutic drugs may be developed which are equally applicable for the use of the present invention (col. 5., lines 1-38).

4. Claim 12 is rejected under 35 U.S.C. 102(e) as being anticipated by Leone et al. 5,891,108. Leone discloses the invention as claimed comprising: a thin walled cylinder containing a plurality of struts, capable of being expanded by applied force, and a channel (12) formed in at least one of the struts; having a closed perimeter on all sides and an open top (29), wherein the channel is smaller in all dimensions than the strut, containing a therapeutic agent. (See Figures 1-2, col. 3, lines 10-15; lines 49-58).

Conclusion

Allowable Subject Matter

5. Claims 4-7, 9 and 11 are allowed.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnson 5,972,027 and Yang et al 6,120,847 show related prosthesis.

Art Unit: 3738

6. Any inquiry concerning this communication or earlier communication regarding this application should be directed to examiner Suzette Jackson at (703) 308-6516. In a case requiring immediate assistance, please call (703) 308-0858 to reach the main operator for Sector 3700.



S. Jackson
30 November 2000



David H. Willse
Primary Examiner

ATTACHMENT TO AND MODIFICATION OF
NOTICE OF ALLOWABILITY (PTO-37)

(November, 2000)

NO EXTENSIONS OF TIME ARE PERMITTED TO FILE CORRECTED OR FORMAL DRAWINGS, OR A SUBSTITUTE OATH OR DECLARATION, notwithstanding any indication to the contrary in the attached Notice of Allowability (PTO-37).

If the following language appears on the attached Notice of Allowability, the portion lined through below is of no force and effect and is to be ignored¹:

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE **THREE MONTHS** FROM THE "DATE MAILED" of this Office action. Failure to comply will result in ABANDONMENT of this application. ~~Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).~~

Similar language appearing in any attachments to the Notice of Allowability, such as in an Examiner's Amendment/Comment or in a Notice of Draftperson's Patent Drawing Review, PTO-948, is also to be ignored.

¹ The language which is crossed out is contrary to amended 37 CFR 1.85(c) and 1.136. See "*Changes to Implement the Patent Business Goals*", 65 *Fed. Reg.* 54603, 54629, 54641, 54670, 54674 (September 8, 2000), 1238 *Off. Gaz. Pat. Office* 77, 99, 110, 135, 139 (September 19, 2000).